

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

11/10/12
PL-I

FILE: B-219508

DATE: November 12, 1985

MATTER OF: Kavouras, Inc.

DIGEST:

Protest is sustained where, due to procuring activity's failure to synopsise a procurement in the Commerce Business Daily in compliance with regulatory requirements for procuring telecommunications equipment from a General Services Administration nonmandatory Federal Supply Schedule contract, protester was unreasonably excluded from an opportunity to compete.

Kavouras, Inc. (Kavouras), protests the Federal Aviation Administration's (FAA) issuance of purchase order No. DTFA14-85-F-B1574 for the lease of 15 radar weather display systems to Alden Electronics (Alden). The order was issued in the amount of \$91,323 under contract No. GS00K-8601-S0229, which had been awarded to Alden by the General Services Administration (GSA) under Federal Supply Schedule contract, group 58, part VI, Multiple Award Telecommunications Schedule.

We sustain the protest.

Kavouras complains that the FAA failed to provide adequate time to prepare a quotation and the procurement should have been synopsized in the Commerce Business Daily (CBD) to give prospective offerors such as Kavouras adequate notice of the requirement.

On Friday, July 12, 1985, the FAA solicited prices for the radar equipment from Alden and Kavouras. At that time, Kavouras indicated that it needed to review the equipment specifications. The FAA sent the specifications to Kavouras by overnight delivery service; however, Kavouras states that

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it did not receive the specifications until Monday, July 15, 1985--the date on which the FAA requested the firm's price. Consequently, Kavouras states that it was unable to prepare a quotation.

The FAA asserts that it properly conducted this procurement. The FAA states that use of this GSA Federal Supply Schedule contract, group 58, part VI, is mandatory and, therefore, the agency was not required to solicit quotations from nonschedule sources such as Kavouras. In support of its determination, the FAA relies upon the provisions of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 404(b) (1984). Those provisions provide that when ordering from mandatory schedules, "ordering offices shall not solicit . . . quotations or otherwise test the market . . . for the purpose of seeking alternative sources to Federal Supply Schedule [sources]."

While the FAA issued the purchase order to Alden on the basis of its belief that use of this GSA Federal Supply Schedule contract is mandatory, the "General Instructions" to Federal Supply Schedule contract, group 58, part VI (which FAA has provided this Office), provide that use of the schedule is nonmandatory. GSA has confirmed to this Office that this Federal Supply Schedule contract is a nonmandatory telecommunications schedule.

An order placed against a GSA nonmandatory telecommunications schedule contract (including a multiple-award schedule), as here, is subject to the requirements of section 201-40.008 of the Federal Information Resources Management Regulation Temp. Reg. 11, 50 Fed. Reg. 13,319, 13,330 (to be codified at 48 C.F.R. § 201-40.008). The regulation, promulgated by GSA, provides that a contracting agency may not place an order in excess of \$50,000 against a nonmandatory telecommunications schedule contract without first considering the availability of other sources by publishing a synopsis in the CBD at least 15 days prior to placing the order. The synopsis announces the intent to place the order and, based on the responses of nonschedule vendors, the agency determines whether placing the order would be the least costly alternative. If evaluation of the responses indicates that placing the order would not be the least costly alternative, the contracting agency then normally should issue a formal solicitation and invite all vendors, including schedule vendors, to compete.

Here, FAA issued a purchase order to Alden against that firm's nonmandatory schedule contract, in excess of the \$50,000 threshold for requiring CBD notice. Thus, under the above regulation, the FAA, at least 15 days prior to issuing the order to Alden, should have published notice of its intent to do so in the CBD. However, based upon the mistaken belief that it was placing the order against a mandatory schedule contract, the FAA failed to comply with these regulatory requirements. Further, while the FAA states that one of the radar weather display systems leased from Alden was urgently required, the agency does not indicate that there was any urgency for the remaining 14 systems when this procurement was initiated in July 1985, which would justify the agency's failure to synopsize the requirement.


Because of the FAA's failure to comply with the synopsis requirement, Kavouras was denied the 15 days allowed under the regulation to prepare a response to a CBD notice specifying the agency's requirements and instead was improperly required to prepare a quotation in 2 working days without benefit of the agency's precise specifications. In our view, Kavouras was unreasonably excluded from an opportunity to compete and we sustain the protest. See Harris Corporation, 64 Comp. Gen. 480 (1985), 85-1 C.P.D. ¶ 455; Comdisco, Inc., 64 Comp. Gen. 11 (1984), 84-2 C.P.D. ¶ 416, Math Box Inc., B-217098, Mar. 28, 1985, 85-1 C.P.D. ¶ 371.

The FAA initially suspended delivery on 14 of the 15 radar weather display systems leased from Alden pending the resolution of this protest. However, by letter of October 2, 1985, the FAA has advised our Office that for safety reasons, it was necessary to proceed to install the remaining equipment. The FAA explains that because use of the existing radar systems recently has been discontinued, apparently for safety reasons, immediate replacement of this radar equipment is necessary so that FAA personnel will be able to continue to provide weather information to conduct safe airplane flights.

We recognize the FAA's need to avoid disruption of these services. Therefore, we recommend that the FAA resolicit the requirement for the 14 systems in accordance with the above regulatory requirements. If Alden is unsuccessful under the resolicitation, the agency should then terminate the firm's lease and award to the successful offeror. This will preclude a disruption of the services.

Kavouras has requested the costs of filing and pursuing its protest, including attorney's fees. We previously have denied recovery of protest costs where we recommend recompetition of a procurement under which the protester's proposal improperly was rejected. In our decision, The Hamilton Tool Co., B-218260.4, Aug. 6, 1985, 85-2 C.P.D. ¶ 132, for example, we concluded that while other potential contractors benefitted from resolicitation, the protester's interest was sufficiently protected so that there was no need to allow protest costs. Here, however, the protest does not involve the rejection of a proposal but, rather, the improper award of a contract resulting from a lack of competition. It was the broad purpose of the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253, et seq. (West Supp. 1985), to increase and enhance competition on federal procurements, and we consider the incentive of recovering the costs of protesting such an improper award to be consistent with this purpose. Washington National Arena Limited Partnership, B-219136, Oct. 22, 1985, 85-2 C.P.D. ¶ _____. Accordingly, Kavouras is entitled to its costs of pursuing the protest.

The protest is sustained.

for 
Comptroller General
of the United States